HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.339 of 2007

Between:

B. Srihari and another.

…Appellants

And

M/s. Voltas Ltd., Hyderabad,
represented by its Territory Manager
and two others.

…Respondents

:: J U D G M E N T ::

Counsel for the appellants : Sri V. Hari Haran

Counsel for respondent No.1 : None

Counsel for respondent No.2 : Government Pleader for Labour.

Counsel for respondent No.3 : None.

April 25, 2007

Per G.S. Singhvi, C.J.

Whether the Conciliation Officer appointed under Section 4 of the Industrial Disputes Act, 1947 (for short, 'the 1947 Act') can give substantive direction in relation to the conditions of employment in an industry is the question which arises for determination in this appeal filed by Shri B. Srihari and Shri D. Srinivas against order dated 23-1-2006 passed by the learned Single Judge in Writ Petition No.16828 of 2003 – M/s.Voltas Ltd. v. The Regional Conciliation Officer and Dy.

Commissioner of Labour, Hyderabad and others.

A perusal of the record shows that the appellants made representations dated 27-12-2000 to Regional Conciliation Officer–cum-Deputy Commissioner of Labour (Twin Cities), Hyderabad (respondent No.2 herein) for directing the management of M/s. Voltas Limited (respondent No.1 herein) to issue appointment orders and pay them difference in wages from the date of joining duty by asserting that they had been working as Sweepers/Helpers/Attenders in the employment of M/s.Voltas Limited; that their services were transferred to Voltas Cooperative Canteen; that they had worked for 1 to 20 years without any break and that even though they were provided all other facilities at par with the regular employees, the management had not issued appointment orders and they were not paid wages for equal work as per variable D.A., ESI, Provident Fund and Gratuity. After sometime, appellant No.1 – B. Srihari filed Writ Petition No.8760 of 2001 for grant of a declaration that the action of the management to close down the canteen establishment was illegal and he was entitled to be continued in service. The same was disposed of by the learned Single Judge on 27-4-2001 with a direction to respondent No.2 to decide the representation of the writ petitioner.

In furtherance of the aforementioned order, respondent No.2 issued notice to the management of respondent No.1 and Voltas Employees Cooperative Canteen Limited and then passed order dated 8-8-2001, the relevant portion of which reads as under:

> "After hearing the contentions of the parties and perusing the material available on record, it is evident that the management of Voltas Ltd. has addressed a letter No.Genl/657/F-11 dated 16-7-1977 to the Deputy Registrar of Cooperative Societies requesting to arrange for Registration of the Society for running a canteen to the employees of Voltas Ltd., wherein it was stated that "since we are providing all the above amenities at the cost of Management, our staff will be able to run the Canteen on economic lines" which clearly indicated that the management of Voltas Ltd. has decided to

deploy some of the staff members to work in the Canteen. It is also evident from the letter dated 9-9-1977 that the Management has terminated the services of the Contractor for running the Canteen and the same was taken over by Voltas Employees' Co.op. Canteen Ltd. and it was also mentioned in the letter about subsidy and facilities extended to the Canteen by the Management. But, the subsidy and supplies were terminated w.e.f. 7-8-1998 by the Management since the Canteen failed to clarify on the Audit queries. It is also evident that a ESI case filed by the Management to de-coverage the canteen employees from payment of ESI, before the ESI court which was dismissed holding that the Management of Voltas Ltd., is a Principal Employer of the employees working in the Canteen. Aggrieved by the same, the Management has preferred a CMA before the Hon'ble High Court and the Hon'ble High Court has granted interim stay with a condition to deposit Rs.10,000/-. It is also evident that a show cause notice was issued to Management by the P.F. Department for non-enrollment of canteen employees under the provisions of EPF & MP Act, 1952. In my opinion, the purpose of establishing the canteen is to provide the items to the employees on economic lines and that it is meant purely for the employees and non-outsiders were allowed and the employees who employed in the Canteen have been deployed from the Voltas Ltd. to work in the Canteen. The Management has not filed any substantial evidence to show that they were employed by the Contractor. Therefore, I hold that the applicants working in the Canteen are employees of the Voltas Ltd., and the management of Voltas Ltd. is directed to issue appointment letter to the applicants and pay the difference of wages to the employees. Accordingly, the representation dated 27-12-2000 is disposed of."

Respondent No.1 challenged the aforementioned order in Writ Petition No.16828 of 2003 by contending that respondent No.2 does not have the power to direct the employer to issue appointment order/letter and pay the alleged difference in wages to the so-called employees.

In the counter filed by the appellants, it was averred that even though they had worked under respondent No.1 for about 20 years, the management had not issued appointment order and they were being

paid less wages. They claimed that respondent No.2 was competent to give direction to the management of respondent No.1 to issue appointment letters and pay difference of wages.

The learned Single Judge allowed the writ petition and quashed order dated 8-8-2001 by observing that Section 12 of the 1947 Act does not empower respondent No.2 to direct the employer for issue of appointment order or payment of wages to the employees.

We have heard learned counsel for the appellants, learned Government Pleader for Labour and examined the records.

Section 4 of the 1947 Act empowers the "appropriate government" to appoint Conciliation Officer for a specified area or for specified industries in a specified area or for one or more specified industries. Section 11 regulates procedure and powers of Conciliation Officers, Boards, Courts and Tribunals. Section 12 enumerates the duties of Conciliation Officers.

Sections 11 (2), (4) and 12 of the 1947 Act, which have bearing on the decision of this appeal, read as under:

> **11. Procedure and powers of conciliation officers, Boards, Courts and Tribunals:**
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> … … …
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> (2) A conciliation officer or a member of a Board, or Court or the presiding officer of a Labour Court, Tribunal or National Tribunal may for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates.
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> … … …
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> (4) A conciliation officer may enforce the attendance of any person for the purpose of examination of such person or call for and inspect any document which he has ground for considering to be relevant to the industrial dispute or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this Act, and for the aforesaid purposes, the conciliation officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of enforcing the

attendance of any person and examining him or of compelling the production of documents.

… … …

12. Duties of conciliation officers:

(1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under Section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Govern- ment a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate

Government:

> Provided that, subject to the approval of the conciliation officer, the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.

A conjoint reading of the above reproduced provisions shows that for achieving one of the objectives set out in the 1947 Act namely peaceful resolution of disputes through mediation and conciliation, a Conciliation Officer can, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates. The Conciliation Officer can also enforce the attendance of any person for the purpose of examination or call for and inspect any document relevant to the industrial dispute and, for this purpose, he can exercise the powers vested in a civil court under the Code of Civil Procedure, 1908. The Conciliation Officer can also hold conciliation proceedings for the purpose of bringing about settlement of the dispute. If the dispute is settled, then a report to that effect is required to be sent to the appropriate government or an officer authorized in this behalf by the appropriate government. If no settlement is reached, then too the Conciliation Officer is required to send report to the appropriate government or the Authorized Officer. This shows that the role of Conciliation Officer is that of a mediator and not the adjudicator. He can only persuade the parties to amicably settle the dispute and send reports of success or failure. There is nothing in the language of Sections 11 and 12 from which it can be inferred that the Conciliation Officer can adjudicate the dispute or issue substantive directions for regulating the conditions of employment of the persons claiming to be employees in an industry or establishment.

Shri V. Hariharan, learned counsel for the appellants argued that even if respondent No.2 does not have adjudicatory power under the 1947 Act, the power to issue direction to the employer in relation to the conditions of service of the employees can be traced in the provisions

of the Andhra Pradesh Shops and Establishments Act, 1988 (for short, 'the 1988 Act').

In our opinion, there is no merit in the contention of the learned counsel. A reading of order dated 8-8-2001 shows that the same was not passed by respondent No.2 in exercise of the power vested in him under any particular statute. Rather, the concerned officer assumed that he had the power to direct for issue of appointment letters to the applicants and order payment of the difference in wages.

The learned Single Judge referred to Section 12 of the 1947 Act, which regulates the duties of Conciliation Officers and held that the said section does not empower respondent No.2 to direct the employer to issue appointment orders to the employees (the appellants herein) and pay them the so-called difference in wages. The learned Single Judge also took cognizance of the argument of the appellants' counsel that the power to give direction for issue of appointment letters can be traced in the provisions of the 1988 Act
and held that without issuing notice to the employer under that Act, respondent No.2 could not have passed order dated 8-8-2001. We entirely agree with him.

We have also gone through the provisions of the 1988 Act, none of which empower the Conciliation Officer to exercise adjudicatory power for resolving dispute between the employer and the employees.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.648 of 2007 filed by the appellants for interim relief is also dismissed.

However, with a view to ensure that adjudication of the dispute raised by the appellants is not further delayed, we direct the Conciliation Officer to submit his report in terms of
Section 12 (4) of the 1947 Act to the appropriate Government and/or Authorized Officer within two weeks from the date of receipt of copy of this order.

The learned Government Pleader for Labour is requested to

instruct the concerned Conciliation Officer to comply with this direction.

G.S. SINGHVI, C.J.

April 25, 2007

C.V. NAGARJUNA REDDY, J.

Note:
The Court Officer is directed to give attested copy
of this order to the learned Government Pleader
for Labour.
(By Order)
svs